

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAURIE EICHSTEDT,

Plaintiff-Appellant,

v

LEON TAYLOR, JR., PREMIER BUSINESS,  
L.L.C.,

Defendants-Appellees,

and

GEORGE BENJAMIN SOCACIU,

Defendant.

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UNPUBLISHED  
May 19, 2015

No. 320392  
Wayne Circuit Court  
LC No. 11-015320-NI

Before: HOEKSTRA, P.J., and SAWYER and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's entry of judgment on the jury's verdict of no cause of action in this auto no-fault action. For the reasons set forth in this opinion, we affirm.

I. FACTS

On May 2, 2009, plaintiff was driving on Ford Road in Dearborn Heights when defendant Leon Taylor, Jr. collided into the back of her vehicle.<sup>1</sup> Plaintiff's vehicle sustained approximately \$6,000 in damages and defendant's vehicle was totaled. The responding officer testified that plaintiff suffered a non-incapacitating injury and left the scene in an EMS vehicle. Defendant declined transport to the hospital.

On October 5, 2009, plaintiff was involved in another rear-end collision on Ford Road. This time, defendant Benjamin Socaciu rear-ended plaintiff's vehicle. However, the accident

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<sup>1</sup> Taylor was driving a vehicle for defendant Premier Business, LLC, at the time of the accident. For purposes of this opinion, we refer to Taylor as "defendant."

only caused minor damage to both vehicles and both vehicles were able to drive away from the scene. Neither Socaciu nor plaintiff required EMS assistance after the accident.

On May 26, 2012, plaintiff commenced this action alleging that she suffered injuries from both accidents causing a serious impairment of bodily function. Plaintiff reached a settlement agreement with Socaciu and he was dismissed from the action. Plaintiff's claim against defendant ultimately proceeded to a four-day jury trial.

At trial, plaintiff testified that before the May 2009 accident, she worked at an elementary school as an "enrichment/lunch" coordinator. Plaintiff's job was physically demanding. Plaintiff was responsible for setting up and removing "100-pound" tables. Plaintiff had to lift and move bulk food products, distribute meals and clean up.

Plaintiff testified that, prior to the May 2009 accident she never had a problem doing her job. However, on cross-examination, plaintiff admitted that she hurt her back while setting up tables in November 2008. Specifically, plaintiff explained that her back "went out" and "spased" one morning when she was trying to push on a table to open it. She stated that the injury caused her "a lot of pain" and she had to leave work that day to seek medical treatment. The following day, plaintiff returned to work, but worked for four weeks with restrictions. After the four-week period, plaintiff testified that she was able to do her job normally again without medications until the May 2009 accident. However, on cross-examination, plaintiff admitted that, on a visit to a cardiologist in February 2009, she reported that she was taking Flexeril and Motrin for back pain, approximately three months before the May 2009 accident. Plaintiff explained that she did not know why she reported taking these drugs, but admitted that maybe her back pain "acted up."

Plaintiff explained that prior to the May 2009 accident she had an active home life. Plaintiff stated that, after the accident, she could not do many of the physical activities she previously enjoyed. In addition, after the accident, plaintiff explained that she was taking or had taken, Flexeril, oxycodone, Lisinopril, Topamax, Zoloft and diazepam.

According to plaintiff, after the May 2009 accident, she got out of her vehicle, but felt dizzy and sick and experienced numbness in her face and neck and her back and shoulder were bothering her. Plaintiff went to the emergency room where she underwent a CT-scan and x-rays. Plaintiff was prescribed pain medication and released the same day. The ER physician did not instruct plaintiff to limit her work activities. Plaintiff initially testified that she returned to work the following day, but later testified that she did not return to work until a week after the accident. Plaintiff testified that on the day after the accident, she went to her family doctor and received pain medication and Xanax because she had anxiety from the accident. However, on cross-examination, plaintiff admitted that if there was no record of her going to her family doctor the day after the accident, then she could not dispute that she actually went to the doctor.

Plaintiff testified that she did not seek further medical treatment until July 2009, when she went to Universal Chiropractor and was treated by a chiropractor. Additionally, Universal Chiropractor had a medical doctor on staff that prescribed pain medications and ordered an MRI. Plaintiff also started receiving disability slips from Universal Chiropractor in July 2009 and Universal Chiropractor's records indicated that plaintiff was "disabled" from May through September 2009, although plaintiff admitted that she was not "totally disabled" during this

timeframe. Plaintiff explained that she did not go to the chiropractor until after she consulted with an attorney who referred her to Universal Chiropractor.

After treating with the chiropractor, plaintiff received treatment from numerous doctors in various specialties. Plaintiff received treatment from a pain specialist, a neurologist, and a therapist for depression. Plaintiff testified that she had migraines following the May 2009 accident and she sought treatment from Dr. Amy Kodrik for the migraines. Plaintiff explained that Dr. Kodrik prescribed her Topomax after an MRI did not reveal anything related to the migraines. On cross-examination, plaintiff agreed that she informed Dr. Kodrik that she had never experienced headaches before and did not know why Annapolis Hospital ordered that she undergo a CT scan for headaches in 2008. Plaintiff testified that she had no recollection of headaches in 2008, but she agreed that she could not dispute Annapolis' records. Additionally, plaintiff agreed that in 2004-2005 she was admitted to Annapolis Hospital for a mild concussion after she was hit in the head with a softball. Plaintiff agreed that she did not tell Dr. Kodrik or any of her other doctors about the concussion, but her family physician knew about it.

With respect to the October 2009 accident, plaintiff testified that she told the responding officer and Socaciu that the accident "aggravated" her pain. Plaintiff explained that her injuries from the May 2009 accident were not resolved at the time of the October 2009 accident. Plaintiff agreed that during discovery, she testified at a deposition that, after this second accident, her pain was "a little bit worse" and she had pain going down her legs that was a "shooting pain" that she felt after the impact. After the second accident, plaintiff began physical therapy.

Plaintiff testified that Dr. Boyd Richards performed a discogram on her as part of his diagnosis of her back pain. After the discogram, Dr. Richard's recommended surgery and on December 15, 2011, ultimately he performed back surgery on plaintiff. Plaintiff testified that she was bedridden for one or two months following the surgery and she could barely walk or get out of bed. She explained that "everything" was difficult after the surgery.

Plaintiff testified about how the accident has impacted her life. She explained that she lost her job at the elementary school in November 2010 because of absences. Plaintiff testified that she had trouble walking, sitting, standing and driving long distances and she sees a doctor for pain management. Plaintiff still volunteered at her church, but needed a helper for assistance.

At trial, both parties introduced deposition testimony of physicians who treated plaintiff or reviewed plaintiff's medical records. Specifically, the parties introduced eight video depositions of physicians. These videos were played for the jury.<sup>2</sup>

Dr. Norbert Roosen, a neurosurgeon at Henry Ford Hospital, testified that he treated plaintiff on February 21, 2011, where he performed a clinical examination and reviewed MRIs performed on plaintiff's cervical and lumbar spine. Dr. Roosen concluded that plaintiff's

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<sup>2</sup> Plaintiff failed to submit copies of the transcripts of these depositions at the time she filed her appeal in violation of MCR 7.210(A)-(B). Plaintiff's appellant counsel later furnished copies of the deposition transcripts to this Court three days before oral argument.

complaints about her back were due to “chronic pain syndrome” and he recommended continued “conservative management.” Dr. Roosen was not of the opinion that plaintiff needed surgery. Dr. Roosen explained that plaintiff did not have any motor difficulties associated with her lumbar spine, but her range of motion of her lower back was impaired and tender. Plaintiff performed well on a “straight leg raising test” and her sensation was within normal limits.

Dr. Roosen explained that plaintiff had “mild” degenerative joint/disc disease, which is arthritis from wear and tear on the joints. Plaintiff’s lumbar spine at L4-L5 had mild degenerative disc disease. Dr. Roosen reviewed another MRI in August 2011, which was “not much different” from the February 2011 MRI and he explained that whether a patient necessitated surgery was dependant on how the patient “evolves over time.” He stated that the operative report of plaintiff’s December 2011 surgery appeared reasonable.

At the close of proofs, plaintiff moved for directed verdicts as to whether the October 5, 2009, accident caused any injury and as to the question of whether plaintiff suffered a serious impairment of bodily function. The trial court denied both motions.

The jury returned a verdict of no-cause of action. On the verdict form, the jury found that plaintiff suffered an injury, but found that defendant was not a proximate cause of the injury. The trial court entered a judgment reflecting the jury’s verdict. Thereafter, plaintiff moved for a new trial “and/or” judgment notwithstanding the verdict (JNOV). The trial court denied plaintiff’s motion on January 24, 2014.

## II. ANALYSIS

Plaintiff contends that the trial court erred in denying her motions for directed verdict and for JNOV.

“This Court reviews de novo a trial court’s decision with regard to both a motion for a directed verdict and a motion for JNOV.” *Taylor v Kent Radiology, PC*, 286 Mich App 490, 499; 780 NW2d 900 (2009). “Motions for a directed verdict or JNOV are essentially challenges to the sufficiency of the evidence in support of a jury verdict in a civil case.” *Id.* We review the evidence and all reasonable inferences in a light most favorable to the nonmoving party and “[i]f reasonable jurors could honestly have reached different conclusions, neither the trial court nor this Court may substitute its judgment for that of the jury.” *Hunt v Freeman*, 217 Mich App 92, 99; 550 NW2d 817 (1996). In conducting our review, we recognize “the jury’s and the judge’s unique opportunity to observe the witnesses, as well as the factfinder’s responsibility to determine the credibility and weight of trial testimony.” *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

The trial court instructed the jury that defendant was at fault for the accident and that plaintiff had the burden to prove (1) she was injured/suffered damages and (2) defendant was a proximate cause of plaintiff’s injuries/damages. Based on the record submitted to this Court, reasonable jurors could have reached different conclusions as to whether plaintiff was injured in the May 2009 accident and as to whether defendant was a proximate cause of plaintiff’s injury. Here, there was conflicting evidence about the nature and origins of plaintiff’s alleged injuries and the jury could have concluded that plaintiff was not a credible witness. See *Zeeland Farm*

*Servics, Inc*, 219 Mich App at 195 (noting that it is “the factfinder’s responsibility to determine the credibility and weight of trial testimony.”) Plaintiff testified at trial that, after the May 2009 accident, she experienced back and neck pain as well as migraine headaches. However, plaintiff admitted on cross-examination that she injured her back in November 2008 at her work and she continued to take medication for this pain approximately three months before the accident. Although plaintiff testified that this injury was resolved after one month, plaintiff admitted that she reported taking Flexeril and Motrin for her back pain in February 2009. Moreover, Dr. Roosen testified that plaintiff had “chronic pain syndrome,” suffered from mild degenerative joint/disc disease, and that, as of February 2011, plaintiff did not need surgery. This evidence could have allowed a juror to find that plaintiff was not a credible witness and that defendant was not a proximate cause of plaintiff’s alleged injuries.

In addition, other evidence could have allowed the jury to find that plaintiff was not credible. For example, plaintiff denied being previously treated for headaches before admitting that she was treated in 2008 for migraines. Plaintiff also admitted that she suffered a concussion in 2004-2005 when she was hit in the head with a softball. Other than her family physician, plaintiff did not tell any of her treating specialists about the concussion. Furthermore, plaintiff initially testified that she returned to work the day after the May 2009 accident before she changed her testimony and explained that she did not return to work for a full week following the accident. Plaintiff’s testimony about the treatment she sought from her family physician was also conflicted. On direct, plaintiff testified that she went to her family physician the day after the accident; however, on cross-examination, plaintiff admitted that if there were no records of her seeking treatment that day, then she did not seek treatment. Moreover, evidence that, after her initial visit to the ER, plaintiff did not seek further medical treatment until July 2009, and did not start receiving disability slips until July 2009, could have allowed a juror to conclude that the car accident did not cause any injuries.

Finally, evidence that plaintiff was involved in the October 2009 accident with Socaciu could have allowed a juror to conclude that defendant was not a proximate cause of plaintiff’s injuries. Plaintiff admitted that she testified at deposition that, following this accident, her pain was “a little bit worse” and she felt a shooting pain down her leg. The jury was free to weigh this evidence in deciding whether defendant was a proximate cause of plaintiff’s alleged injuries. *Zeeland Farm Servs, Inc*, 219 Mich App at 195.

In sum, there was conflicting evidence concerning the nature and origin of plaintiff’s injuries and the defense introduced evidence that undermined plaintiff’s credibility. In addition, there was a wealth of medical evidence that was introduced by both parties that the jury was free to consider. Plaintiff has failed to cite anywhere in the medical depositions to show that reasonable jurors could not have differed as to whether plaintiff established her claim. Rather, based on all of the evidence viewed in a light most favorable to the defense, reasonable jurors could have honestly reached different conclusions as to whether plaintiff established her claim and the issues in this case were therefore properly submitted to the jury and the jury’s verdict must stand. *Hunt*, 217 Mich App at 99. Accordingly, the trial court did not err in denying plaintiff’s motions for directed verdict and for JNOV. *Taylor*, 286 Mich App at 500.

Next, plaintiff appears to argue that the trial court erred in denying her motion for a new trial because the verdict was against the great weight of the evidence.

“With respect to a motion for a new trial, the trial court’s function is to determine whether the overwhelming weight of the evidence favors the losing party.” *Severn v Sperry Corp*, 212 Mich App 406, 412-413; 538 NW2d 50 (1995). We review a trial court’s decision on a motion for a new trial for an abuse of discretion and we afford “substantial deference to the conclusion of a trial court that a verdict was not against the great weight of the evidence.” *Id.*

In this case, because reasonable jurors could have differed as to whether plaintiff established her claim, plaintiff cannot show that the “overwhelming weight of the evidence” was in her favor. *Id.* Accordingly, the trial court did not abuse its discretion in denying plaintiff’s motion for a new trial. *Id.*

Affirmed. No costs awarded. MCR 7.219(A).

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Stephen L. Borrello